

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
William L. Massey, and Nora Mead Brownell.

Greenbrier Pipeline Company, LLC

Docket Nos. CP02-396-004  
CP02-397-004  
CP02-398-004

ORDER DENYING REQUEST FOR RECONSIDERATION

(Issued November 13, 2003)

1. In this order, the Commission addresses the request for reconsideration of the order issued in this proceeding on July 28, 2003 (July 28 Order).<sup>1</sup> The July 28 Order denied in part and dismissed in part requests for rehearing of the order issued in this proceeding on April 9, 2003 (April 9 Order).<sup>2</sup> In the April 9 Order, the Commission, after completing its environmental analysis, issued a certificate of public convenience and necessity to Greenbrier Pipeline Company, LLC (Greenbrier), authorizing it to construct and operate the Greenbrier Pipeline Project.
2. For reasons discussed below, the Commission denies the request for reconsideration filed by Jim Williams.<sup>3</sup>

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<sup>1</sup>Greenbrier Pipeline Company, LLC, 104 FERC ¶ 61,145 (2003).

<sup>2</sup> Greenbrier Pipeline Company, LLC, 103 FERC ¶ 61,023 (2003).

<sup>3</sup>On September 29, 2003, the Commission issued an order tolling Mr. Williams' filing because it also requested rehearing of the July 28 Order. However, Mr. Williams' request was filed outside the 30-day period within which rehearing requests must be filed, pursuant to Section 19(a) of the Natural Gas Act. Because the 30-day period is statutorily based, it cannot be extended or waived by the Commission and Mr. Williams' rehearing request must be rejected. Nonetheless, the Commission is addressing Mr. Williams' filing as a request for reconsideration.

### **The Request for Reconsideration**

3. In asking the Commission to reconsider the issuance of the certificate of public convenience and necessity that it issued to Greenbrier in this proceeding, Mr. Williams brings to the Commission's attention certain events and documents relating to a civil action filed by Dominion Transmission Inc. (Dominion) and Greenbrier against Mr. Williams in the Circuit Court for Mercer County, West Virginia. Specifically, Mr. Williams states that on September 20, 2001, Dominion and Greenbrier filed a complaint for injunctive relief against Mr. Williams in order to gain entry onto Mr. Williams' land for surveying and examination in order to route its Greenbrier Pipeline Project.<sup>4</sup>

4. On October 18, 2001, Mr. Williams filed an answer to the complaint, which included a number of affirmative defenses, including claims that Mr. Williams' tract is a wilderness tract protected by the federal Endangered Species Act, as well as West Virginia's Natural Streams Preservation Act.<sup>5</sup> Mr. Williams' answer also affirmatively alleged that there are alternative routes for the pipeline which should be preferred under either a balance of hardship test or greater public interest test.

5. On March 3, 2003, Mr. Williams filed, pursuant to West Virginia's rules of civil procedure, a motion to dismiss the civil action for failure to prosecute. An order granting Mr. Williams' motion to dismiss for want of prosecution was entered on or about March 18, 2003.

6. Mr. Williams suggests that the affirmative defenses he raised in this state court proceeding should be viewed by the Commission as defenses against Greenbrier's proposal to construct the 279-mile Greenbrier Pipeline Project through the states of West Virginia, Virginia, and North Carolina.

### **Discussion**

7. On April 9, 2003, after completing its environmental analysis, the Commission issued a certificate of public convenience and necessity to Greenbrier authorizing it to construct and operate the Greenbrier Project. In the July 28 Order, the Commission addressed requests for rehearing of the April 9 Order and comments on the Final Environmental Impact Statement regarding whether routing alternatives were adequately considered, and the Commission determined that all reasonable alternatives were

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<sup>4</sup> Civil Action No. 01-C-542-F in the Circuit Court of Mercer County, West Virginia.

<sup>5</sup> Mr. Williams cites to West Virginia Code, ' ' 22-13-1 to 22-13-15.

sufficiently considered.<sup>6</sup> Mr. Williams' request for reconsideration provides no new evidence warranting reconsideration of that finding. Indeed, the merits of the affirmative defenses that Mr. Williams raised in the civil action were never addressed by the state court, since the action was never prosecuted. Consequently, Mr. Williams' request for reconsideration is denied.

The Commission orders:

Mr. Williams request for reconsideration is denied.

By the Commission.

( S E A L )

Magalie R. Salas  
Secretary

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<sup>6</sup> See 104 FERC at 61,521-2.